Supreme Court, U.S.
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Case No. 03-1488

In The

Supreme Court of the United States

ULYSSES TORY AND RUTH CRAFT,

Petitioners,

v.

JOHNNIE L. COCHRAN, JR.,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeal Of The State Of California, Second Appellate District, Division One

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a permanent injunction as a remedy in a defamation action, preventing all future speech about an admitted public figure, violates the First Amendment.

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OPINIONS BELOW

A copy of the unpublished decision of the Court of Appeal of the State of California is included as Appendix A. The California Court of Appeal's opinion contains the pertinent text of the permanent injunction entered by the Superior Court of the State of California for the County of Los Angeles. (A5-A6)[1] The permanent injunction is included as Appendix B, and the Superior Court's contemporaneous Statement of Decision is included as Appendix C. The Supreme Court of California denied review of the California Court of Appeal's decision, although Justices Kennard and Brown voted to grant review. A copy of the order of the Supreme Court of California is included as Appendix D.

STATEMENT OF JURISDICTION

Pursuant to 28 U.S.C. § 1257, this Court has jurisdiction to review the October 29, 2003 decision of the Court of Appeal of the State of California, following a denial of discretionary review by the Supreme Court of California on January 28, 2004.

CONSTITUTIONAL PROVISION INVOLVED

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press;

[1] Citation to the appendices will be styled, "A___".

or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const., amend. I.

STATEMENT OF THE CASE

The California Court of Appeal affirmed a permanent injunction that forever prohibits *all* future speech – regardless of content or context – about an admitted public figure. (A2, A5-6)

Noted attorney Johnnie L. Cochran, Jr., who concedes his status as a public figure, represented Ulysses Tory in connection with a civil rights action in the early 1980's. For a variety of reasons, Tory became dissatisfied with the quality of services provided by Cochran and his law offices. (A2-A3) As a result, Tory began peacefully picketing on the sidewalk in front of Cochran's law office in Los Angeles and later in front of the Superior Court building in downtown Los Angeles, and demanded the return of money he believes Cochran owes to him. (A 3-5)

Tory and others carried placards bearing various statements. (A3-4) Tory did not personally carry all of the signs, and several of the signs made no mention of Cochran. (*See id.*) The purported statements that mentioned Cochran criticized his handling of Tory's case, and generally questioned Cochran's abilities as an attorney. (*Id.*)

As a result of the picketing activity, Cochran sued Tory and Does for defamation (libel, libel per se, slander and slander per se) and false light invasion of privacy. (A5) The Superior Court for the State of California issued a

preliminary injunction, and subsequently tried the suit without a jury. (*Id.*) Tory represented himself in the proceedings. (*Id.*) Tory consistently asserted his constitutional right to free speech in the trial court proceedings. For example, Tory's Answer to Cochran's operative complaint asserted that "the issuance of a preliminary and/or permanent injunction against his picketing activities as proposed in the Complaint would constitute an unconstitutional prior restraint." (Answer to Amended Complaint at 2.) Moreover, in his objections to the trial court's Statement of Decision, Tory protested that his picketing was "protected under the First Amendment (Freedom of Expression) to the United States Constitution," and further noted that Cochran "is a public figure and therefore, must be held at a higher standard than a private citizen in a matter or issue of libel, slander and invasion of privacy." (Objections to Statement of Decision at 2.)

After finding in Cochran's favor, the Superior Court did not award money damages, but did issue a permanent injunction. (A12-A14) The permanent injunction provides, in pertinent part, as follows:

> Unless and until this Court, after notice to JOHNNIE L. COCHRAN, JR. ("COCHRAN") and opportunity for him to be heard, modifies or vacates this order, it is ordered that TORY, and his employees, agents, representatives, and all persons acting in concert, cooperation or participation with him, including, but not limited to, Ruth Craft and any other co-conspirator, are permanently enjoined from engaging in any of the following: . . .

> In any public forum, including, but not limited to, the Los Angeles Superior Court, and any other place at which COCHRAN appears for the purpose of practicing law: (i) picketing COCHRAN and/or COCHRAN's law firm; (ii) displaying signs, placards or other written or printed material about COCHRAN and/or COCHRAN's law firm; (iii) *orally uttering statements about COCHRAN and/or COCHRAN's law firm* . . . (emphasis added).

Ruth Craft, Tory's putative spouse, was not named as a defendant in the lawsuit, nor was she given a chance to defend herself at trial, but her speech rights were also explicitly restrained in the injunction.

Tory and Craft timely appealed from the permanent injunction. (A6) The appeal focused primarily on whether the permanent injunction is an overbroad prior restraint on future speech issued in violation of the First Amendment and Article 1, Section 2(a) of the California Constitution. (A6-8)[2]

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[2] The appeal raised other issues implicating the First Amendment. First, the appeal asserted that all of the purported statements are protected opinion and/or hyperbole, and therefore none of the statements can give rise to a cause of action for defamation or false light invasion of privacy. (A9-A10) Second, the appeal submitted that Cochran, a public figure, failed to prove, under the constitutionally-mandated clear and convincing evidence standard, that Petitioners published any of the allegedly defamatory statements with actual malice. (A 10) Third, to the extent the permanent injunction is based on placards that are not "of and concerning" Cochran, the appeal insisted that the injunction should, as a matter of constitutional law, be reversed. (Appellants' Opening Brief at 42-43.) Fourth, the appeal argued that Cochran did not present evidence that Petitioners published the vast majority of the alleged statements, and to the extent

(Continued on following page)

The appeal was heard before Division One of the Second Appellate District of the California Court of Appeal. On October 29, 2003, the California Court of Appeal issued an unpublished decision affirming the injunction in full and addressing some, but not all, of the arguments raised by Tory and Craft. (A1-A11) Specifically, the California Court of Appeal rejected the contention that the permanent injunction represented an overbroad prior restraint in violation of the First Amendment and the California Constitution. (A6-A8) The decision states that permanent injunctions on speech are not prior restraints, and that the overbreadth doctrine does not apply to permanent injunctions. (A8)

On December 8, 2003, Tory and Craft timely petitioned the Supreme Court of California for review of the California Court of Appeal's decision. The Petition for Review argued that the permanent injunction is an overbroad prior restraint, inconsistent with the First Amendment, the California Constitution, decisions of this Court and decisions of the Supreme Court of California. (Petition for Review at 8-15) On January 28, 2004, the Supreme Court of California denied review of the California Court of Appeal's decision, with Justices Kennard and Brown voting to grant review. (A30)

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the permanent injunction is based on any unpublished statements it should be reversed. (*Id.* at 40-41.) Tory and Craft do not concede that any statements were published with actual malice; they maintain that many of the purported statements were not published by Tory, that Craft did not publish any of the alleged statements, that several statements are not "of and concerning" Cochran and that all of the purported statements are constitutionally protected opinion and/or hyperbole.

Tory and Craft have faithfully abided by the permanent injunction restricting their speech since the injunction was entered by the Superior Court on April 24, 2002.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE AN IMPORTANT LEGAL ISSUE, WHICH HAS DIVIDED THE CIRCUITS AND STATES, CONCERNING THE CONSTITUTIONALITY OF PRIOR RESTRAINTS ON SPEECH IN DEFAMATION CASES.

A. The Superior Court's Permanent Injunction Imposed A Broad Prior Restraint On All Speech About A Public Figure.

The term "prior restraint" describes orders forbidding communications that are issued before the communications occur. *Alexander v. United States*, 509 U.S. 544, 550 (1993). This Court has explained that "permanent injunctions – *i.e.*, court orders that actually forbid speech activities – are classic examples of prior restraints" because they involve a "true restraint on future speech." *Id.*

The permanent injunction affirmed by the California Court of Appeal is a classic prior restraint because it prohibits future picketing, writing, or any other form of speech in "any public forum." The permanent injunction broadly applies to any speech concerning Johnnie L. Cochran, Jr., who "willingly concedes" his status as a public figure. (A10, A13, A21) Indeed, the injunction says that Tory and Craft cannot "orally utter statements about

Cochran" in any public forum. Under the terms of the injunction, if Tory or Craft speak of Cochran, even in a private conversation in a public park or while walking down a sidewalk, they would be violating the terms of the injunction.

B. This Court Should Grant Review To Resolve A Split Between The Circuits And The States Over The Constitutionality Of Prior Restraints In Defamation Cases, And To Decide The Significant Question Of Whether Prior Restraints Are Permissible In Defamation Cases Brought By Public Figures.

"One of the unwavering precepts of the American law of remedies," is that "equity will not enjoin a libel." Rodney A. Smolla, *Law of Defamation*, § 9.85 (2003). The California Court of Appeal's decision, however, departs from this rule, and stands alongside the opinions of several federal Circuit and state courts of last resort that likewise have approved prior restraints in the defamation context. These decisions are in direct conflict with rulings of many other states and circuits rejecting injunctive relief as a remedy in defamation cases.

Three federal Circuits have approved injunctions on speech to prevent, in advance of future publication, supposedly defamatory or false speech, and another Circuit endorsed the same view in *dictum*. In *Lothschuetz v. Carpenter*, 898 F.2d 1200, 1206, 1208-09 (6th Cir. 1990), the Sixth Circuit directed the district court to issue a permanent injunction prohibiting any repetition of statements already found to be false and libelous. The Fifth Circuit came to a similar conclusion, approving an injunction against statements that were the subject of an

underlying defamation lawsuit. *Brown v. Petrolite Corp.*, 965 F.2d 38, 50-51 (5th Cir. 1992). The Ninth Circuit also has approved an injunction against purportedly false speech. *San Antonio Community Hospital v. Southern Calif. Dist. Council of Carpenters*, 125 F.3d 1230, 1237 (9th Cir. 1997).[3] The Third Circuit, ruling in a diversity action, found the reasoning behind state supreme court decisions allowing for such injunctions "quite persuasive," but was bound to conclude that the Supreme Court of Pennsylvania would disagree. *Kramer v. Thompson*, 947 F.2d 666, 677 (3d Cir. 1991).

In addition to the Circuits that have condoned injunctions in defamation cases, at least six state supreme courts also have concluded that restraints on damaging and false speech are constitutionally permissible. *Advanced Training Systems, Inc. v. Caswell Equipment Co., Inc.*, 352 N.W.2d 1, 11 (Minn. 1984); *Retail Credit Co. v. Russell*, 218 S.E.2d 54, 62-63 (Ga. 1975); *O'Brien v. University Community Tenants Union, Inc.*, 327 N.E.2d 753, 755 (Ohio 1975); *Guion v. Terra Mktg. of Nevada, Inc.*, 523 P.2d 847, 848 (Nev. 1974); *Carter v. Knapp Motor Co.*, 11 So.2d 383, 385 (Ala. 1943); *Menard v. Houle*, 11 N.E.2d 436, 437 (Mass. 1937). Three other state supreme courts have endorsed the same view in *dicta*. *Aguilar v. Avis Rent A Car Systems, Inc.*, 980 P.2d 846, 21 Cal.4th 121, 141 & n.8 (Cal. 1999); *Sid Dillon Chevrolet-Oldsmobile-Pontiac, Inc. v. Sullivan*, 559 N.W.2d 740, 747 (Neb. 1997); *Downey v. United Weatherproofing, Inc.*, 253 S.W.2d 976, 983 (Mo.

[3] The Superior Court's Statement of Decision relied in part on the Ninth Circuit's decision in *San Antonio*. (A23)

1953).[4] These courts often cite one another, and frequently reference this Court's admonition in *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376, 390 (1973), that "it has never been held that all injunctions [on speech] are impermissible." *See, e.g., Retail Credit, supra*, 218 S.E.2d at 62-63. *Pittsburgh Press*, however, did not involve allegedly defamatory or false speech, but involved an injunction restraining commercial advertising for illegal hiring impermissibly based on gender.

These decisions approving injunctions in the defamation context contradict opinions from this Court and from other courts around the country. In *Near v. Minnesota*, 283 U.S. 697 (1931), this Court's seminal opinion on prior restraints, a newspaper appealed a permanent injunction issued after a case "came on for trial." *Id.* at 705-06. The unconstitutional injunction in that case "perpetually" prevented the defendants from publishing again because, in the preceding trial, the lower court had determined that the defendants' newspaper was "'chiefly devoted to malicious, scandalous and defamatory articles.'" *Id.* at 706. This Court held that an injunction on future speech, even if preceded by the publication of defamatory material, was an unconstitutional prior restraint. *Id.* at 706, 721.

[4] Intermediate appellate courts in several states also have approved injunctive relief in defamation cases. *See, e.g., Barlow v. Stipes*, 744 N.E.2d 1, 9-10 (Ind. Ct. App. 2001); *Bingham v. Struve*, 184 A.D.2d 85, 89-90 (N.Y. App. Div. 1992); *Dickson v. Dickson*, 529 P.2d 476, 478 (Wash. Ct. App. 1975); *Wolf v. Gold*, 9 A.D.2d 257, 259-60 (N.Y. App. Div. 1959); *Russell v. Russell*, 14 A.2d 540, 543 (N.J. Ch. 1940).

In *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971), a group of picketers and pamphleteers were enjoined from protesting a real estate developer's business practices. *Id.* at 417. Although this Court noted that the injunction in *Keefe* had been labeled "temporary" by the trial court, it was treated as permanent since its label was "little more than a formality," it had been in effect for years, and it "already had [a] marked impact on petitioners' First Amendment rights." *Id.* at 418. This Court struck down the injunction in *Keefe* as "an impermissible restraint on First Amendment rights." The Court explained that the "claim that the expressions were intended to exercise a coercive impact on respondent does not remove them from the reach of the First Amendment," as "[n]o prior decisions support the claim that the interest of an individual in being free from public criticism of his business practices in pamphlets or leaflets warrants use of the injunctive power of a court." *Id.* at 418-19.

Consistent with *Near* and *Keefe*, several federal Circuits have held that equity will not enjoin a libel or slander. *See, e.g., Metropolitan Opera Ass'n, Inc. v. Local 100, Hotel Employees and Restaurant Employees Int'l Union*, 239 F.3d 172, 177-78 (2d Cir. 2001); *Community for Creative Non-Violence v. Pierce*, 814 F.2d 663, 672 (D.C. Cir 1987); *In re Providence Journal Co.*, 820 F.2d 1342, 1345-46 (1st Cir. 1986); *United States v. Doe*, 455 F.2d 753, 760 n.4 (1st Cir. 1972); *Alberti v. Cruise*, 383 F.2d 268, 272 (4th Cir. 1967); *Crosby v. Bradstreet Co.*, 312 F.2d 483, 485 (2d Cir. 1963); *Robert E. Hicks Corp. v. National Salesmen's Training Ass'n*, 19 F.2d 963, 964 (7th Cir. 1927); *American Malting Co. v. Keitel*, 209 F. 351, 354-56 (2d Cir. 1913).

Likewise, several state courts of last resort recognize and adopt the constitutionally-based rule against

enjoining defamatory speech. *See, e.g., Hajek v. Bill Mowbray Motors, Inc.*, 647 S.W.2d 253, 255 (Tex. 1983); *Willing v. Mazzocone*, 393 A.2d 1155, 1157-58 (Pa. 1978); *Greenberg v. Burglass*, 229 So.2d 83, 86-89 (La. 1969); *Mescalero Apache Tribe v. Allen*, 469 P.2d 710, 711 (N.M. 1970); *Schmoldt v. Oakley*, 390 P.2d 882, 884-87 (Okla. 1964); *Prucha v. Weiss*, 197 A.2d 253, 256 (Md. 1964); *Kwass v. Kersey*, 81 S.E.2d 237, 243-46 (W.V. 1954); *Moore v. City Dry Cleaners & Laundry, Inc.*, 41 So.2d 865, 873 (Fla. 1949); *Montgomery Ward & Co. v. United Retail, Wholesale & Dep't Store Employees*, 79 N.E.2d 46, 48-50 (Ill. 1948); *Marlin Fire Arms Co. v. Shields*, 64 N.E. 163, 171 N.Y. 384, 391-96 (N.Y. 1902); *Beck v. Railway Teamsters' Protective Union*, 77 N.W. 13, 24 (Mich. 1898).

Among the many cases affirming the general rule against permanent injunctions, the facts in three decisions are closely analogous to the present situation, but the courts in those cases arrived at a conclusion opposite to that of the California Court of Appeal in this case. The Pennsylvania Supreme Court's decision in *Willing v. Mazzocone* is exactly on point and directly in conflict with the California Court of Appeal's ruling. In *Willing*, two lawyers successfully sued a former client for defamation after the former client protested in front of the building in which the plaintiffs' law firm was located. 393 A.2d at 1156-57. While ringing a cow bell and blowing a whistle to attract attention, the former client wore a "sandwich-board" placard proclaiming that the lawyers had stolen her money and "sold [her] out." *Id.* The trial court issued a permanent injunction on the former client's future "defamatory and libelous" speech regarding the lawyers, and the injunction was affirmed by an intermediate appellate court, following a modification narrowing the

injunction to the specific statements at issue. *Id.* at 1157. Despite the narrowing modification, however, the Supreme Court of Pennsylvania held that the injunction was a prior restraint that violated the free speech guarantees of the United States and Pennsylvania Constitutions. *Id.* at 1157-58.

In *Greenberg v. Burglass,* the Supreme Court of Louisiana determined that a lawyer who had prevailed in a defamation suit after being labeled a "crook," "crooked" and a "slimy kike" was not entitled to a permanent injunction because such an injunction was inconsistent with the free speech provisions of the United States and Louisiana Constitutions. 229 So.2d at 84-87.

In *Kwass v. Kersey,* West Virginia's highest court struck down an injunction prohibiting the defendant, who claimed to be a former client of plaintiff, as well as defendant's "agents, servants, employees and representatives" from "making public or circulating any libelous or slanderous statements of any kind, character or description concerning the plaintiff." 81 S.E.2d at 242-47.

In sharp contrast, the Court of Appeal in this case enjoined not only future defamatory statements, but *all* statements by the defendant and a non-defendant about Johnnie Cochran in any public forum. Contrary to this Court's holdings in cases such as *Near v. Minnesota* and *Alexander v. United States*, the Court of Appeal's expressly ruled that the prior restraint doctrine does not apply to permanent injunctions issued after a trial on the merits. (A6-A7)

This Court should grant review to resolve the split in authority that divides the Circuits and state courts of last resort as to the constitutionality of prior restraints in

defamation cases. The issue takes on an added constitutional dimension since the plaintiff in this case is a public figure. This Court has explained that "public figures are less vulnerable to injury from defamatory statements because of their ability to resort to 'self-help'" – *i.e.*, they "usually enjoy significantly greater access than private individuals to channels of effective communication, which enable them through discussion to counter criticism and expose the falsehood and fallacies of defamatory statements." *Wolston v. Reader's Digest Ass'n, Inc.*, 443 U.S. 157, 164 (1979). "[M]ore importantly," this Court has explained that "public figures are less deserving of protection than private persons because public figures, like public officials, have 'voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them.'" *Id.*

This Court should review the constitutional propriety of prior restraints in defamation cases, and at least determine whether such remedies are available where the defamation plaintiff is a public figure.

C. This Court Should Grant Review To Decide A Significant Question Concerning When A Court Order Preventing Speech Is Impermissibly Overbroad.

Prior restraints on speech constitute "the most serious and least tolerable infringement on First Amendment rights," and are "presumptively unconstitutional." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976); *see also Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558-59 (1975); *Keefe*, *supra*, 402 U.S. at 419. "Injunctions," the Court has explained, "carry greater risks of censorship and discriminatory application than do general ordinances."

Madsen v. Women's Health Center, Inc., 512 U.S. 753, 764 (1994).

Consistent with this Court's abhorrence of prior restraints, it has ruled that any injunction restricting speech must "burden no more speech than necessary to serve a significant government interest." *Madsen*, *supra*, 512 U.S. at 765; *see also NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982); *Pittsburgh Press*, *supra*, 413 U.S. at 390. Put another way, an injunction "issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order." *Carroll v. President and Comm'rs of Princess Anne*, 393 U.S. 175, 183 (1968).

Given these constitutional principles, courts consistently disallow overbroad permanent injunctions on speech. *See, e.g., CPC Int'l, Inc. v. Skippy Inc.*, 214 F.3d 456, 461-63 (4th Cir. 2000); *Doe v. TCI Cablevision*, 110 S.W.3d 363, 375 (Mo. 2003). For instance, in *Crosby v. Bradstreet Co.*, 312 F.2d 483 (2d Cir. 1963) the Second Circuit struck down a permanent injunction, issued after a defamation trial, prohibiting "any" report or statement about a businessman or his brother. The court determined that the injunction was an unconstitutional prior restraint, but further observed that the injunction was defective because it precluded "any" remarks, and was not, at a minimum, "directed solely to defamatory reports, comments or statements." *Id.* at 485.

Even in jurisdictions that expressly permit injunctions on defamatory speech, courts caution that any such injunction should be narrowly drawn. For example, in *Lothschuetz*, *supra*, the Sixth Circuit permitted a "narrow"

permanent injunction, limited "to the statements which have been found in this and prior proceedings to be false and libelous." 898 F.2d at 1206, 1209. In *Brown*, *supra*, the Fifth Circuit approved, in principle, of the issuance of an injunction on future false and damaging speech, but ruled that the district court's injunction, as drafted, was "overly broad," and, as a result, remanded the case "to allow the court to narrow its previous language so as to enjoin" the specifically objectionable language. 965 F.2d at 50-51. Similarly, in *Retail Credit*, *supra*, the Supreme Court of Georgia approved a permanent injunction on speech following a defamation trial, but explained that the injunction was limited to "repetition of the exact allegations found to have been libelous." 218 S.E.2d at 62-63.

Without regard to any of the foregoing authority, the California Court of Appeal determined that the permanent injunction is not overbroad even though the injunction prohibits *all* future speech about Cochran, and not just the specific statements previously held to be defamatory or even "defamatory" speech in general. (A7-A8) Indeed, the permanent injunction in this case is so broad that it makes no exception for privileged speech, true speech or any otherwise protected comments about Cochran. The permanent injunction even applies to prevent private conversations that mention Johnnie Cochran in any way. The court's reasoning rested on the unsupported and erroneous proposition that the overbreadth doctrine does not apply to permanent injunctions. (*Id.*) As a matter of law, the California Court of Appeal ruled incorrectly on this issue of profound constitutional importance. Moreover, as a matter of logic, the decision fails because the Court acknowledged that the overbreadth doctrine applies to

preliminary injunctions, statutes and ordinances. (*Id.*) If the overbreadth doctrine applies to interim remedies such as preliminary injunctions then, *a fortiori*, it must also apply to permanent injunctions which are indefinite in nature.

This Court should grant review to resolve the important issue of the constitutional limits and scope of injunctions on speech.

CONCLUSION

The axiom "equity will not enjoin a libel" is no longer an "unwavering precept in the American law of remedies." In the past seven decades since *Near* was decided, a substantial minority of jurisdictions, nationwide, have departed from the general rule and do permit prior restraints in the defamation context. This split in the law threatens a fundamental and cherished right that this Court has described as "'the matrix, the indispensable condition, of nearly every other form of freedom,'" *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 145 (1967), such that "the loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). This Court should resolve the current split in authority on this issue of profound constitutional importance, and announce that prior restraints may not be issued in defamation cases, or, at minimum, not in cases involving public figures as plaintiffs.

This Court has approved potential restrictions on speech in areas of substantial and general public interest such as national security, *Near*, 283 U.S. at 716, and

obscenity, *id.*, but this Court has not endorsed such restraints in the defamation context. Defamation of a public figure requires actual malice at the time of publication as well as a false statement of fact. *Herbert v. Lando*, 441 U.S. 153, 199-200 (1979) (Stewart, J., dissenting). Neither mindset nor falsity can be ascertained in advance of a publication because circumstances and understandings can change. Thus, for this reason and others, prior restraints cannot be an appropriate remedy in defamation cases, and particularly not in cases involving public figures who are "less deserving of protection" by virtue of their opportunities for "self-help" and their choice to enter the limelight. *Wolston, supra,* 443 U.S. at 164.

Petitioners, who are forever prevented from mentioning or discussing a prominent public figure, respectfully request that this Court grant this Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX A

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JOHNNIE L. COCHRAN, Plaintiff and Respondent, v. ULYSSES TORY et al., Defendants and Appellants.	B159437 (Los Angeles County Super. Ct. No. BC239405) (Filed Oct. 29, 2003)

APPEAL from an order of the Superior Court of Los Angeles County, Ronald M. Sohigian, Judge. Affirmed.

Davis Wright Tremaine, Gary L. Bostwick, Alonzo Wickers IV; Loeb & Loeb, Douglas E. Mirell and Jean-Paul Jassy for Defendants and Appellants.

Nemecek & Cole, Jonathan B. Cole and Karen K. Coffin for Plaintiff and Respondent.

A lawyer sued a former client for defamation and invasion of privacy. The lawyer prevailed, and the trial court (based on a finding that damages were inadequate under the circumstances) issued a permanent injunction. We reject the former client's challenges to the injunction and affirm.

FACTS

A.

In 1983, Ulysses Tory and Javier Gutierrez (who had been involved in a "shoot out" with the Los Angeles Police Department) retained Johnnie L. Cochran, Jr. to represent them in a personal injury action against the City of Los Angeles and others. Cochran filed the action and settled Gutierrez's claim, but not Tory's, and Tory became unhappy with the manner in which Cochran was representing him.

In July 1985, Tory wrote to Cochran, complaining that Cochran was conspiring with the City "to cover up criminal and immoral activities to private citizens for political gains. . . ." Tory said he would "settle" his conspiracy claims against Cochran and "refrain from any public discussions of conspiracy or scandal" if Cochran quickly paid him $10 million "or very close to it." Cochran, in turn, filed a motion to withdraw as Tory's lawyer, and the motion was granted in November. No fees were due (it was a contingency case) and none were paid.

B.

In July 1995 (after ten years of silence and at which time Cochran was receiving a great deal of publicity as one of the defense lawyers in O.J. Simpson's criminal trial), Tory again wrote to Cochran, demanded that Cochran return money that Tory had paid to Earl E. Evans, a lawyer who Tory said had "allegedly represented [Tory and his putative spouse, Ruth Craft] in matters of Divorce, Child Custody, Order to Show Cause and Union Bank!!!" Cochran did not respond.[1]

C.

In the late 1990's, Tory and a troop of people began picketing outside Cochran's office and outside the Los Angeles Superior Court, carrying placards with these statements:

> "Johnnie is a crook, a liar and a Thief. Can a lawyer go to HEAVEN? Luke 11:46"
>
> "Hey Johnnie, How Much Did They Pay $$ You to F--- Me?"
>
> "You've been a BAD BAD boy, Johnnie L. Cochran"

---

[1] Although Tory's letter referred to Evans as one of Cochran's "associates," there was no such relationship. During the 1980's, Evans was Cochran's tenant and paid for the space by providing limited legal services for Cochran. One such task was the "intake interview" when Tory first consulted Cochran in 1985, but Evans did not perform any other services for Cochran with regard to Tory's personal injury case (and that was the only case in which Cochran ever represented Tory). Evans, meanwhile had been directly retained by Tory and Craft to handle some family law matters.

"Att[orne]y COCHRAN, We have no Use for Illegal Abuse"

"I Know How it Feels to be Terrorized. God Bless USA"

"Absolute Discrimination"

"Attorney Cochran, Don't We Deserve at Least the same Justice As O.J.?"

"Unless You have O.J.'s Millions – You'll be Screwed if You USE J.L. Cochran, Esq."

"Johnnie L. Cochran, Esq., Your Piss is Not Rain"

"Attn: Attorney Johnnie L. Cochran, Jr., Flaunting and Flossing. It's the People He's Costing"

"Attorney Johnnie, It's Past Time!!!"

"Johnnie Cochran I Know WHAT You, the County and city DID to my CASE"

"DON'T LAUGH, COCHRAN SCREWED YOU GUYS TOO!"

What can I do if I don't receive the Justice the Constitution guarantees ME?

Of all the picketers, only Tory and possibly one other person had been Cochran's clients. Tory transported the picketers to Cochran's office and to the courthouse, bought lunch for all of them, and admitted the "possibility" that some of the picketers joined him only because they wanted a free lunch. In October 2000, while the picketing continued, Tory wrote to Cochran, demanded the return of $6,500 allegedly paid to Evans, and also demanded another $15,000 from Cochran to "compensate"

him for his "time and efforts to bring this entire matter to closure. . . ."

D.

Cochran filed this lawsuit against Tory in October 2000, alleging causes of action for defamation and invasion of privacy.[2] Tory answered, and represented himself throughout the trial court proceedings. A preliminary injunction was issued, discovery was conducted, and the case was tried to the court in March 2002. In its statement of decision, the trial court found that Cochran was entitled to a permanent injunction against Tory because Tory's statements were false and were made with knowledge of their falsity, "maliciously and with reckless disregard for the truth [and] for the purpose of inducing Cochran to pay Tory various amounts of money to which Tory was not entitled." The court enjoined Tory as follows:

> "[I]t is ordered that Tory, and his employees, agents, representatives, and all persons acting in concert, cooperation or participation with him, including, but not limited to, Ruth Craft and any other co-conspirator, are permanently enjoined from engaging in any of the following:
>
> "1. Standing, assembling or approaching within [300 yards] of (i) Cochran; or (ii) Cochran's place of business . . . ;

---

[2] The trial court found that, after "the commencement of this litigation, [Tory's conduct] worsened as the band of picketers supplemented the placards with additional banners and loud chanting of obscene statements."

"2. In any public forum, including, but not limited to, the Los Angeles Superior Court and any other place at which Cochran appears for the purpose of practicing law: (i) picketing Cochran [or] Cochran's law firm; (ii) displaying signs, placards or other written or printed material about Cochran [or] Cochran's law firm; (iii) orally uttering statements about Cochran [or] Cochran's law firm; and

"3. Contacting, harassing, threatening, stalking, disturbing the peace of, keeping under surveillance or blocking the movements of Cochran."

Tory (now represented by counsel and purportedly joined by Ruth Craft, who is restrained by the injunction in her capacity as Tory's agent) appeals.

DISCUSSION

I.

Tory contends "the second numbered paragraph" of the permanent injunction is a "particularly egregious" prior restraint and, as such, unconstitutional under both the federal and state constitutions. We disagree.

Although a prior restraint can be presumptively unconstitutional, that rule has no application where, as here, an injunction against a private person operates "to redress alleged private wrongs," not to suppress a legitimate publication. (*Organization for a Better Austin v. Keefe* (1971) 402 U.S. 415, 418-419.) The injunction in this case was issued based on the trial court's findings – after a full trial on the merits – that Tory's statements were both libelous and slanderous within the meaning of Civil Code

sections 45 and 46, and that pecuniary compensation would not afford an adequate remedy. As a result, the second numbered paragraph "was issued only after the [trial court] determined that [Tory] had engaged in [unlawful activity], and the order simply preclude[s Tory] from continuing [his] unlawful activity." (Cf. *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 138.)

As our Supreme Court explained in *Aguilar,* the special vice of a prior restraint is that it suppresses communication before there has been an adequate determination that the speech is unprotected under the First Amendment. Once there has been a final adjudication on the merits that the speech is unprotected, an injunction restraining that speech does not constitute an impermissible prior restraint. (*Aguilar v. Avis Rent A Car System, Inc., supra,* 21 Cal.4th at p. 141.) In *Aguilar,* the Court held that "the pervasive use of racial epithets that has been judicially determined to violate the FEHA is not protected by the First Amendment, and such unlawful conduct properly may be enjoined." (*Id.* at pp. 141-142.) By parity of reason, the same is true here, where the pervasive use of libelous and slanderous statements have been judicially determined to violate Civil Code sections 45 and 46.[3]

II.

Alternatively, Tory contends the second numbered paragraph is "unconstitutionally overbroad." This is so, he

[3] The same is true under the California Constitution. (*Aguilar v. Avis Rent A Car System, Inc., supra,* 21 Cal.4th at pp. 142-145.)

claims, because it means he cannot "[p]raise [Cochran] as the finest lawyer of Los Angeles," "[i]nform people that [Cochran] represented O.J. Simpson," "[w]rite a 'letter to the editor' criticizing the court's ruling below," "[r]epublish or read aloud the Court of Appeal's decision in *Cochran v. Cochran* [(1998)] 65 Cal.App.4th 488 . . . , where parties alleged that Cochran made a death threat against them," "[a]ppear in court to challenge the [i]njunction," or "[t]ell friends, at a picnic in a public park: 'Johnnie Cochran was not very nice to me.'" We disagree.

The cases cited by Tory all construe language in preliminary injunctions (*Paradise Hills Associates v. Procel* (1991) 235 Cal.App.3d 1528) or statutes, ordinances, and the like (*NAACP v. Alabama* (1964) 377 U.S. 288; *In re Berry* (1968) 68 Cal.2d 137; *Ketchens v. Reiner* (1987) 194 Cal.App.3d 470; *Gooding v. Wilson* (1972) 405 U.S. 518; *Houston v. Hill* (1987) 482 U.S. 451; *Schad v. Mount Ephraim* (1981) 452 U.S. 61; *Airport Comm'rs v. Jews for Jesus, Inc.* (1987) 482 U.S. 569; *Welton v. City of Los Angeles* (1976) 18 Cal.3d 497), not permanent injunctions issued after a full trial on the merits and findings that the speech at issue is not protected. For the reasons explained in Part I, *ante,* Tory's cases have nothing to do with the permanent injunction issued in this case.

Based upon his prior unlawful conduct and his admissions in court that, absent restraint by the court, he would continue to picket Cochran, Tory has no basis for his challenge to the breadth of the injunction.[4]

---

[4] When asked whether he intended to keep picketing Cochran until Cochran paid him, Tory said, "It's a possibility." The court followed-up

(Continued on following page)

III.

Tory contends the judgment is not supported by substantial evidence because (according to Tory) the evidence establishes only that he stated his opinion, not that he made "provably false" statements of fact. We disagree.

Substantial evidence shows that Tory "crossed the line separating protected rhetorical hyperbole from unprotected fraudulent misrepresentations of fact." (*San Antonio Hosp. v. So. Cal. Council of Carpenters* (9th Cir. 1997) 125 F.3d 1230, 1237.) Tory's statements – such as, "Hey, Johnnie, how much did they pay $$ you to f--- me?" and "Johnnie Cochran, I know what you, the County and City did to my case," and "Johnnie is a crook, a liar and a thief," accuse Cochran of theft and of accepting money as a bribe to abandon Tory's case against the City and the County and, as such, constitute libel within the meaning of Civil Code section 45 – because a false statement reasonably calculated to induce the reader to understand that a person is guilty of a crime or is dishonest in his profession is sufficient to establish libel. (*Gallagher v. Chavalas* (1941) 48 Cal.App.2d 52, 59; *Goehring v. Wright* (N.D.Cal. 1994) 858 F.Supp. 989, 1004; 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 471, p. 558; §§ 482-484, pp.

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by asking Tory, "Do you desire to do more picketing of Mr. Cochran or with respect to your grievance against Mr. Cochran at any time at any place? . . . I just mean as things are today, no changes of position on anybody's part except, are you going to want to do more picketing . . . of Mr. Cochran with respect to these grievances at any place, at any time?" Tory answered, "I'm quite sure, Your Honor, I will protest against Mr. Cochran. . . . Yes. . . . Unless you order us not to."

566-572.) No more was required. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 872-873.)[5]

IV.

In a related argument, Tory contends the evidence is insufficient to establish that he acted with actual malice. Again, we disagree.

Assuming without deciding that Tory is entitled to the same protections afforded to a legitimate newspaper defending a libel action, and assuming that Cochran is (as he willingly concedes) a public figure, and thus assuming that this is a case in which we must review the evidence de novo to determine whether it supports the trial court's finding of actual malice (*Bose Corp. v. Consumers Union of U.S., Inc.* (1984) 466 U.S. 485, 514; *McCoy v. Hearst Corp.* (1986) 42 Cal.3d 835, 842), we are satisfied that Tory acted with actual malice. Uncontroverted evidence establishes that Cochran did not owe any money to Tory, that Tory knew his statements were all false, and that he nevertheless set out to harass Cochran by hiring picketers to carry outrageous placards and repeatedly march in front of Cochran's office building and in front of the Los Angeles Superior Court. Under any standard, this is more than enough to show actual malice.

---

[5] We summarily reject Tory's suggestion that the "context" of his statements shows they were mere opinion. In context, Tory was demanding money that wasn't owed to him, which to us supports the trial court's finding that Tory intended to go to any length to slander Cochran, and that he knowingly made false statements of fact.

DISPOSITION

The permanent injunction is affirmed. Cochran is entitled to his costs of appeal.

NOT TO BE PUBLISHED.

VOGEL (MIRIAM A.), J.

We concur:

ORTEGA, Acting P.J.

MALLANO, J.

APPENDIX B

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOHNNIE L. COCHRAN, JR., Plaintiff, vs. ULYSSES TORY; and DOES 1 through 50, inclusive, Defendants	Case No. BC239405 The Honorable Ronald Sohigian **PERMANENT INJUNCTION** DATE: April 24, 2002 TIME: 8:30 a.m. DEPT: "41" TRIAL DATE: March 18, 2002 (Filed Apr. 24, 2002)

WHEREAS, the above-entitled cause came on regularly for trial on March 19, 2002, March 20, 2002 and March 21, 2002, in Department 41 of the above-entitled court, the Honorable Ronald Sohigian, Judge, presiding without jury, and was tried on that date;

WHEREAS, oral and documentary evidence was introduced on behalf of the respective parties and the cause was argued and submitted for decision;

The Court, having considered the evidence and heard the arguments of counsel and being fully advised, hereby issues the following permanent injunction against ULYSSES TORY ("TORY");

Unless until this Court, after notice to JOHNNIE L. COCHRAN, JR. ("COCHRAN") and opportunity for him to be heard, modifies or vacates this order, it is ordered that TORY, and his employees, agents, representatives, and all persons acting in concert, cooperation or participation with him, including, but not limited to, Ruth Craft and any other co-conspirator, are permanently enjoined from engaging in any of the following:

1. Standing, assembling or approaching within three hundred (300) yards of (i) COCHRAN; or (ii) COCHRAN's place of business located at 4929 Wilshire Blvd., Los Angeles, CA 90010;

2. In any public forum, including, but not limited to, the Los Angeles Superior Court and any other place at which COCHRAN appears for the purpose of practicing law: (i) picketing COCHRAN and/or COCHRAN's law firm; (ii) displaying signs, placards or other written or printed material about COCHRAN and/or COCHRAN's law firm; (iii) orally uttering statements about COCHRAN and/or COCHRAN's law firm; and,

3. Contacting, harassing, threatening, stalking, disturbing the peace of, keeping under surveillance or blocking the movements of COCHRAN.

IT IS SO ORDERED.

DATED: April 24, 2002.

RONALD M. SOHIGIAN
RONALD M. SOHIGIAN
JUDGE OF THE LOS ANGELES
SUPERIOR COURT

APPENDIX C

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOHNNIE L. COCHRAN, JR. Plaintiff, vs. ULYSSES TORY; and DOES 1 through 50, inclusive. Defendants.	) Case No. BC239405)) The Honorable Ronald Sohigian)) (Filed Apr. 24, 2002))) STATEMENT OF DECISION PURSUANT TO *RULE OF COURT* SECTION 232 AND *CODE OF CIVIL PROCEDURE* SECTION 632)) DATE: April 24, 2002) TIME: 8:30 a.m.) DEPT: 41

The above-entitled cause came on regularly for trial of the equitable issue of plaintiff's request for injunctive relief, on March 19, 2002, March 20, 2002 and March 21, 2002, in Department 41 of the above-entitled court, the Honorable Ronald Sohigian, Judge, presiding without

jury. Jonathan B. Cole, Esq. of Nemecek & Cole appeared as counsel for plaintiff JOHNNIE L. COCHRAN, JR. ("COCHRAN"), and ULYSSES TORY ("TORY") appeared in pro per. The Court, having ordered this matter bifurcated on February 20, 2002, proceeded to hear and adjudicate the factual and legal questions necessary to determine whether COCHRAN was entitled to the permanent injunctive relief he sought to preclude TORY from picketing and making false and defamatory written and oral comments about COCHRAN in connection therewith.

Oral and documentary evidence material to said factual and legal questions was introduced on behalf of the respective parties and the cause was argued and submitted for decision. The Court, having considered the evidence and heard the arguments of counsel and being fully advised, found that the facts and the law supported the issuance of a permanent injunction against TORY, and granted COCHRAN the injunctive relief he sought, as set forth in the separately filed Permanent Injunction.

In so doing, the Court (as discussed at the February 20, 2002 status conference) "evaluate[d] the lawfulness of [TORY'S] picketing conduct" and, in connection therewith, was necessarily "required to make a determination as to the 'truthfulness' of the statements at issue" which did "in effect lead to findings with respect to COCHRAN's defamation and invasion of privacy causes of action" [Notice of Ruling re February 20, 2002 Status Conference]. As such, subsumed in the findings of fact and conclusions of law made by the Court for the purpose of determining the propriety of injunctive relief, are findings that, with the exception of the existence

and amount of damages, all of the elements of the tort theories advanced by COCHRAN (libel, libel per se, slander, slander per se, and invasion of privacy (false light)) were established concurrently with COCHRAN's establishing his right to equitable relief. The issues so subsumed in the equitable issue which has been tried by this Court need not (indeed may not) be retried (*Golden West Baseball Company v. City of Anaheim* (1994) 25 Cal.App.4th 11, 50; see also *Walton v. Walton* (1995) 31 Cal.App.4th 277; *Raedeke v. Gibraltar Sav. & Loan Assn.* (1974) 10 Cal.3d 665, 671; *Union Oil of California v. Reconstruction Oil Company et al.* (1943) 58 Cal.App.2d 30).

Based thereon, this Court hereby issues the following statement of decision:

1. This Court finds that COCHRAN is entitled to permanent injunctive relief as set forth in the separately filed Permanent Injunction because pecuniary compensation will not afford COCHRAN adequate relief and the restraint is necessary to prevent a multiplicity of judicial proceedings.

   a. This Court bases its decision on the following facts which it finds, based on admissible evidence offered and admitted at trial:

      (1) TORY retained COCHRAN on a contingency basis in early 1983 in the matter of *TORY, et al. v. City of Los Angeles, et al.*, Case No. C473 832;

      (2) On or about July 18, 1985, TORY, with the assistance of his putative wife, Ruth Craft ("Craft"), wrote COCHRAN a threatening letter accusing COCHRAN of conspiring against

him and demanding $10 million dollars:

(3) The July 18, 1985 letter in effect demanded that COCHRAN make payments of money to TORY, apparently as a return of legal fees that TORY and/or Craft paid to Earl Evans, Esq. ("Evans");

(4) Evans was a space-for-services tenant in COCHRAN's law suite at 4929 Wilshire Boulevard and was not a partner of COCHRAN;

(5) TORY and Craft knew and recognized that Evans and COCHRAN were not partners as evidenced by, among other things, the fact that all the checks for legal services rendered for TORY and/or Craft are made payable to Evans, not to COCHRAN;

(6) The contents of the July 18, 1985 letter are inaccurate and constitute obviously unreasonable demands;

(7) COCHRAN owes no money whatsoever to TORY;

(8) TORY never paid COCHRAN any money at all for legal services or any other purpose;

(9) COCHRAN responded to TORY's July 18, 1985 letter by letter dated July 30, 1985 and subsequently sought and obtained an order relieving him as counsel for TORY in the matter of *TORY, et al. v. City of Los Angeles, et al.*;

(10) COCHRAN was justified in seeking to be relieved as counsel for TORY because it was essentially impossible for COCHRAN to continue to represent TORY under the circumstances following the letter of July 18, 1985;

(11) TORY and Craft complained to the State Bar about COCHRAN and Evans, but the State Bar took no action except to tell them that their asserted grievances as to Evans and COCHRAN were fee disputes rather than disputes regarding disciplinable matters;

(12) TORY and Craft did not go forward with fee-related litigation or arbitration against COCHRAN or Evans;

(13) It is not true, as TORY alleged, that Evans' representation in various family law matters for Craft was deficient or that Craft prevailed in a federal court action regarding her child custody matters;

(14) What actually happened in connection with Craft's family law dispute according to Craft's own testimony is that she lost in the state court and lost in the federal courts after that, but that her former husband voluntarily turned the children over to her, which is no reflection at all on the quality of legal representation rendered by Evans;

(15) Beginning before January 2000 but also in and after January 2000 TORY and various agents of TORY have regularly picketed COCHRAN's office in Los Angeles at 4929 Wilshire Boulevard, and

the Los Angeles Superior Court with placards;

(16) The placards used by TORY contain slogans such as (1) "Johnnie is a crook, a liar and a thief. Can a lawyer go to heaven? Luke 11:46"; (2) "Hey Johnnie How Much Did They Pay$$You to F_ _k Me?"; (3) "You've been a BAD, BAD boy, Johnnie Cochran"; (4) "Attorney COCHRAN We have no Use for Illegal Abuse"; (5) I Know How it Feels to be Terrorized; (6) Absolute Discrimination; (7) "Attorney Cochran, Don't We Deserve at Least the Same Justice as O.J.?"; (8) Unless You Have O.J.'s Millions You'll be Screwed if You Use J.L. Cochran, Esq."; (9) Johnnie L. Cochran, Esq., Your Piss is Not Rain; (10) "Attn: Attorney Johnnie L. Cochran, Jr., Flaunting and Flossing It's the People He's Costing"; (11) Attorney Johnnie, It's Past Time; (12) Johnnie Cochran I Know What You, the County and the city did [sic] my case"; and, (13) "Don't Laugh, Cochran Screwed You Guys Too." These slogans and the statements made therein are untruthful, misleading and malicious.

(17) After the commencement of this litigation, the conduct of TORY and his agents worsened as the band of picketers supplemented the placards with additional banners and loud chanting of obscene statements.

(18) The statements made by TORY and his agents also included statements to the

effect that COCHRAN owed a substantial amount of money to TORY; that COCHRAN owed debts to TORY based on breaches of past oral and written agreement that COCHRAN acted dishonestly or below the standard of care in prior legal representation of TORY; and that Cochran is a bad character and/or a substandard practitioner of law. These statements, too, are untruthful, misleading and malicious.

(19) COCHRAN is a public figure.

(20) All of the aforementioned statements made were false when they were made; were made maliciously and with reckless disregard for the truth; and were actually made for the purpose of inducing COCHRAN to pay TORY various amounts of money to which TORY was not entitled;

(21) All the people who were involved in the picketing, including but not necessarily limited to Craft, were the agents of TORY acting within the course and scope of their agency during the times that they were picketing, preparing signs, and speaking at the premises at 4929 Wilshire Boulevard, Los Angeles, and in front of the Los Angeles Superior Court courthouse.

(22) TORY and his agents, including but not necessarily limited to Craft, were aware of the falsity of the statements when they were made;

(23) The picketing conduct of TORY and his agents was intentionally targeted at

preventing person(s) from entering COCHRAN's place of business for legal services and creating a negatively charged and ominous environment.

(24) Despite repeated requests, TORY has refused to cease his picketing efforts unless he was paid a monetary "settlement" by COCHRAN.

(25) TORY and his agents and [sic] made false statements in the picketing, both expressly and impliedly, and orally and in writing.

(26) TORY has indicated that unless prevented by a judgment or some other process of this court he will continue to picket, and the Court finds that he would.

(27) This is not a matter of speech related issues: it is simply the use of false and defamatory and privacy-invading communications to coerce or attempt to improperly coerce payment of money in tribute for or premium for desisting from that type of activity.

(28) TORY has claimed to have no means by which a monetary award could be satisfactorily paid.

(29) COCHRAN has no remedy which is plain, speedy, and adequate except for injunctive relief.

(30) In the absence of injunctive relief, COCHRAN will be irreparably harmed by the conduct of TORY about which COCHRAN complains herein.

(31) TORY's behavior is not protectable and his conduct is enjoinable.

(32) The order for injunctive relief the court is making now is absolutely necessary in order to prevent a multiplicity of actions.

b. The legal basis for this Court's decision that COCHRAN is entitled to injunctive relief is:

(1) "[A] final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant; Where pecuniary compensation would not afford adequate relief; Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief; 3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings . . . "(*Civil Code* Section 3422; see also *Remillard-Dandini v. Dandini* (1941) 46 Cal.App.2d 678, 680);

(2) Picketing and use of banners and/or signs containing false and misleading allegations and orally uttering false and misleading statements support the grant of an injunction (*San Antonio Community Hospital v. Southern California District Council of Carpenters*, (1997) 125 F.3d 1230, 1237 citing *Mercy Health Services v. 1199 Health & Human Services Employees Union* (W.D. Mich. 1995) 888 F. Supp. 828, 838.)

(3) Reputation is "difficult to restore once it has been tainted" and hence injury to reputation is "irreparable" within the

meaning or the requirements for injunctive relief (*Id.* at 1238).

(4) TORY's malicious picketing is likely to damage COCHRAN's professional reputation is for an improper purpose and, as such, is enjoinable.

2. This court finds that TORY and his agents engaged in libelous activity.

(a) This Court bases its decision on the facts found, based on admissible evidence offered and admitted at trial identified at paragraphs 1.a.(1) through (25), above.

(b) The legal basis for this Court's decision that TORY and his agents engaged in libelous activity is:

(1) California *Civil Code* section 45 defines "libel" as:

"a (i) false and (ii) unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, (iii) which exposes any person to hatred, contempt, ridicule, or obloquy, or (iv) which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

(2) The written statements made by TORY and his agents in connection with the picketing described above are false and unprivileged and had a tendency to injure COCHRAN in his occupation as an attorney.

(3) No recognized privilege pursuant to California *Code of Civil Procedure* section 47, or any other provision of law,

applies to TORY's picketing actions, nor can TORY support an affirmative defense of truth.

3. This Court finds that TORY and his agents engaged in libel per se.

a. This Court bases its decision on the facts found, based on admissible evidence offered and admitted at trial, identified at paragraphs 1.a.(1) through (25), above.

b. The legal basis for this Court's decision that TORY and his agents engaged in libel per se is:

(1) California *Civil Code* section 45a defines "libel *per se*" or "libel on its face" as; "a libel which is defamatory of the plaintiff without the necessity of explanatory matter, such as an inducement, innuendo or other extrinsic fact."

(2) The definition of "libel per se" is "very broad [and] include[s] almost any language which, upon its face, ha[s] a natural tendency to injure a person's reputation, either generally, or with respect to his occupation (*Bates v. Campbell* (1931) 213 Cal. 438).

(3) In construing language charged as libelous it is necessary to consider the publication as a whole (*Stevens v. Snow* (1923) 191 Cal. 58).

(4) The court in determining whether or not there is a libel *per se* "must place itself in the position of a reader under the circumstances of the publication." (*Rosenberg v. J.C. Penney Co.* (1939) 30

Cal.App.2d 609, 619; *Bettner v. Holt* (1886) 70 Cal. 270).

(5) Here, as in *Rosenberg, supra*, "the language and meaning of the placards are so plain that it was not necessary to resort to the innuendo and while some of the language may have been free from any libel, it is sufficient to support an action where the gist of the language contains the objectionable charge or insinuation, and here the charges upon the placards lead to the conclusion that plaintiff s were accused of dishonesty in dealing with their customers, thereby injuring the business and its good reputation." (*Id.* at 622.)

4. This Court finds that TORY and his agents engaged in acts which are both slanderous and slanderous per se.

a. This Court bases its decision on the facts found, based on admissible evidence offered and admitted at trial, identified at paragraphs 1.a.(1) through (25), above.

b. The legal basis for this Court's decision that TORY and his agents engaged in slander and slander per se is:

(1) California *Civil Code* section 46 defines "slander," in pertinent part as: "a false and unprivileged publication, orally uttered, and also communications by radio or any mechanical or other means which: (1) Charges any person with crime, or with having been indicted, convicted, or punished for crime; . . . (3) Tends directly to injure

him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits; . . . or (5) Which, by natural consequence, causes actual damage."

(2) "Words which fall within the purview of *Civil Code* Section 46 are deemed to constitute slander per se (*Douglas v. Janis* (1974) 46 Cal.App.3d 931; *Contento v. Mitchell* (1972) 28 Cal.App.3d 356) with the effect that the utterance of such words is actionable without proof of special damage (*Correin v. Santos* (1961) 191 Cal.App.2d 844)" (*Albertini v. Shaefer* (1979) 97 Cal.App.3d 822, 829).

(3) "A fair construction of *Civil Code* section 46 requires a holding that calling an attorney a 'crook' is . . . actionable as slander per se . . . imputing dishonesty or lack of ethics to an attorney is also actionable under *Civil Code* section 46 because of the probability of damage to professional reputation (*Katz v. Rosen* (1975) 48 Cal.App.3d 1032)" (*Id.* at 829-830).

(4) TORY made false and unprivileged publications orally and through loudspeakers which tended to directly injure COCHRAN in respect to his profession, trade or business by imputing to him

general disqualification in those respects which the occupation of attorney at law peculiarly requires and by imputing things which have a natural tendency to lessen his profits.

5. This Court finds that TORY violated COCHRAN's privacy by creating publicity which placed him in a false light in the public's eye.

a. This Court bases its decision on the facts found, based on admissible evidence offered and admitted at trial, identified at paragraphs 1.a.(1) through (25), above.

b. The legal basis for this Court's decision that TORY and his agents engaged in "false light" invasion of privacy is:

(1) Courts recognize as tortious "invasion of privacy," publicity which places the plaintiff in a false light in the public eye, (*Kinsey v. Maeur* (1980) 107 Cal.App.3d 265, 270; see Prosser, *Law of Torts* (4th ed., 1971) s 117, pp. 804-814.)

(2) The interest protected by the false light invasion of privacy tort is individual freedom from the wrongful publicizing of private affairs and activities which are outside the realm of legitimate public concern. (See *Coverstone v. Davies* (1952) 38 Cal.2d 315, 323; *Stryker v. Republic Pictures Corp.* (1951) 108 Cal.App.2d 191, 194).

(3) "[T]he scope of an actionable invasion of privacy includes not only true but derogatory statements about an individual, but also statements that falsely

attribute offensive behavior to him." (*Selleck v. Globe* (1985) 166 Cal.App.3d 1123, 1135 citing *Gill v. Curtis Publishing Co.* (1952) 38 Cal.2d 273, 239 P.2d 630.)

(4) "Inasmuch as plaintiff's claim for false light invasion of privacy is based on the facts alleged in his claim for libel, he likewise is not required to plead special damages in order to state a cause of action for false light [invasion of privacy]." (*Selleck v. Globe* (1985) 166 Cal.App.3d 1123).

(5) TORY's publicized statements are not only false and defamatory in nature but falsely attribute offensive behavior to COCHRAN and have violated his right of privacy concerning his peace of mind to be free from such false publications.

DATED: APR. 24, 2002

RONALD M. SOHIGIAN
RONALD SOHEGIAN
JUDGE OF THE
LOS ANGELES
SUPERIOR COURT

APPENDIX D

Court of Appeal, Second Appellate District,
Division One – No. B159437
S121121

IN THE SUPREME COURT OF CALIFORNIA

En Banc

JOHNNIE L. COCHRAN, Plaintiff and Respondent,

v.

ULYSSES TORY et al., Defendants and Appellants.

(Filed Jan. 28, 2004)

Petition for review DENIED.

George C.J., was absent and did not participate.

Kennard, J. and Brown, J., are of the opinion the petition should be granted.

/s/ WERDEGAR
Acting Chief Justice